



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE  
&  
THE HONOURABLE MR.JUSTICE HARISANKAR V. MENON

TUESDAY, THE 7<sup>TH</sup> DAY OF OCTOBER 2025 / 15TH ASWINA, 1947

ITA NO.200 OF 2019

AGAINST THE ORDER DATED 30.01.2018 IN ITA NO.75 OF 2016 OF  
I.T.A.TRIBUNAL, COCHIN BENCH

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APPELLANT/ASSESSEE/APPELLANT IN ITA:

DR.K.M.ASHIK, AGED 54 YEARS,  
10B, SKYLINE PALACE HEIGHTS,  
JAWAHAR NAGAR, KOZHIKODE -673 011.

BY ADVS.  
SHRI.M.GOPIKRISHNAN NAMBIAR  
SHRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURRYAN THOMAS  
SHRI.PAULOSE C. ABRAHAM  
SRI.RAJA KANNAN

RESPONDENT/REVENUE/RESPONDENT IN ITA:

THE COMMISSIONER OF INCOME TAX,  
C.R.BUILDING, I.S. PRESS ROAD,  
COCHIN - 682 018.

BY ADVS.  
CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT  
SHRI.P.R.AJITH KUMAR

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 23.09.2025,  
ALONG WITH ITA NOS.217/2019, 218/2019, THE COURT ON 07.10.2025  
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 7<sup>TH</sup> DAY OF OCTOBER 2025 / 15TH ASWINA, 1947

ITA NO. 217 OF 2019

AGAINST THE ORDER DATED 30.01.2018 IN ITA NO.76 OF 2016  
OF I.T.A.TRIBUNAL, COCHIN BENCH

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APPELLANT/ASSESSEE/APPELLANT IN ITA:

DR.K.M.ASHIK, AGED 54 YEARS,  
10B, SKYLINE PALACE HEIGHTS,  
JAWAHAR NAGAR, KOZHIKODE- 673011.

BY ADVS.  
SHRI.M.GOPIKRISHNAN NAMBIAR  
SHRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SHRI.PAULOSE C. ABRAHAM  
SRI.RAJA KANNAN

RESPONDENT/REVENUE/RESPONDENT IN ITA:

THE COMMISSIONER OF INCOME TAX,  
C.R.BUILDING, I.S.PRESS ROAD,  
COCHIN- 682018.

BY ADVS.  
CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT  
SHRI.P.R.AJITH KUMAR

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 23.09.2025,  
ALONG WITH ITA NOS.200/2019 AND CONNECTED CASES, THE COURT ON  
07.10.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 7<sup>TH</sup> DAY OF OCTOBER 2025 / 15TH ASWINA, 1947

ITA NO.218 OF 2019

AGAINST THE ORDER DATED 30.01.2018 IN ITA NO.77 OF 2016 OF  
I.T.A.TRIBUNAL, COCHIN BENCH

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APPELLANT/ASSESSEE/APPELLANT IN ITA:

DR.K.M.ASHIK, AGED 54 YEARS,  
10B, SKYLINE PALACE HEIGHTS,  
JAWAHAR NAGAR, KOZHIKODE-673 011.

BY ADVS.  
SHRI.M.GOPIKRISHNAN NAMBIAR  
SHRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SHRI.PAULOSE C. ABRAHAM  
SRI.RAJA KANNAN

RESPONDENT/REVENUE/RESPONDENT IN ITA:

THE COMMISSIONER OF INCOME TAX,  
C.R.BUILDING, I.S.PRESS ROAD,  
COCHIN-682 018.

BY ADVS.  
CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT  
SHRI.P.R.AJITH KUMAR

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 23.09.2025,  
ALONG WITH ITA.200/2019 AND CONNECTED CASES, THE COURT ON 07.10.2025  
DELIVERED THE FOLLOWING:

**JUDGMENT**

[ITA Nos.200, 217 and 218 of 2019]

**Harisankar V. Menon, J.**

These appeals are at the instance of an assessee under the Income Tax Act, 1961 (hereinafter referred to as the "Act") with respect to the assessment years 2007-08, 2011-12, and 2012-13.

2. For the afore assessment years, the assessing authority noticed that the appellant-assessee had received the following amounts from M/s.Moidu Medicare Pvt. Ltd., of which the appellant was a Director:-

|         |                  |
|---------|------------------|
| 2007-08 | Rs.5,32,205/-    |
| 2011-12 | Rs.14,47,789/-   |
| 2012-13 | Rs.1,01,05,828/- |

The afore amounts have been treated as "deemed dividend" under Section 2(22)(e) of the Act and added to the income returned by the appellant-assessee. The appeals before the first appellate authority being unsuccessful, the matter was carried in further appeals before the Income Tax Appellate Tribunal. The



Tribunal, by the impugned common order dated 30.01.2018, held that it could not trace the assessee's corresponding loan account in the books of accounts of the Company and hence, the addition should be made under Section 68 of the Act and not under Section 2(22)(e) of the Act.

3. It is feeling aggrieved by the afore directions that the appellant has instituted these appeals.

4. Sri.Raja Kannan, the learned counsel for the appellant- assessee, would contend that the Tribunal ought to have only held with reference to the legality of the findings contained in the assessment order. He pointed out that the appellant, being the Director of the Company, had introduced certain amounts to the Company, and a portion of these amounts was being repaid to him, which would not attract the provisions of Section 2(22)(e) of the Act. He further argues that the Tribunal went wrong in directing an assessment under Section 68 of the Act, since the Department never had such a case. According to him, the direction of the Tribunal effectively results in an assessment



under a new source of income, without any challenge by the revenue to the findings in the first appellate order.

5. *Per contra*, Sri.Christopher Abraham, the learned Standing Counsel for the respondent-revenue, sought to sustain the orders of the Tribunal. He also pointed out that re-assessments have already been finalized pursuant to the directions by the assessing authority, and the appellant has already filed further appeals against the revised assessment orders.

6. We have considered the rival contentions as well as the connected records.

7. We notice that the Tribunal in its order has found that the addition under Section 2(22)(e) of the Act is not required since the appellant's corresponding loan account was not seen in the books of accounts of the Company. However, we notice that the appellant has relied on the balance sheet and financials of the Company, as per which the unsecured loans from the Directors have been specifically recorded therein. If that be the



case, the transaction between the Company and the appellant would not fall within the four corners of Section 2(22)(e), and the matter requires a fresh consideration at the hands of the assessing authority. The Tribunal has remitted the matter for a revisit at the hands of the assessing authority, quite rightly.

8. However, while remitting the matter for fresh consideration, the Tribunal has further observed that the assessment requires to be made with reference to the provisions of Section 68 of the Act. True, there was no appeal at the instance of the revenue. However, we are of the opinion that even if the Tribunal has not made any such observations after remand, the assessing authority could have resorted to the provisions of Section 68. Therefore, we do not find much substance in the contentions raised to the effect that the Tribunal ought not to have issued directions as above. In any event, we are of the opinion that the observation made by the Tribunal is not to be taken as a positive-binding direction on the assessing authority after the remand. An assessment with reference to the



provisions of Section 68 is required to be made only when the assessee has no explanation as regards the cash credits in his books of accounts. In the case at hand, the appellant-assessee seems to have offered explanations, as noticed earlier, with reference to its dealings with the Company, which are more or less business transactions between parties. In such circumstances, we are of the opinion that the remit ordered by the Tribunal is to be made an open remit. The appellant-assessee, therefore, will be entitled to point out that the provisions of Section 68 are not attracted if such a course of action is being taken by the assessing authority after the remit.

Resultantly, we dispose of these appeals, holding that the remand by the Tribunal would be an open remand and the Department has to consider the contentions raised with reference to the non-applicability of the provisions of Section 2(22)(e) of the Act and finalize the assessment accordingly. If any steps with reference to the provisions of Section 68 of the Act are being taken, the assessee is to be given an opportunity to explain its



stand as regards the non-applicability thereof. Since it is pointed out that the revised assessment has already been completed and the appeals against the assessment are pending before the first appellate authority, the appellant-assessee would be entitled to raise all such contentions before the first appellate authority in the afore appeals as well.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**HARISANKAR V. MENON, JUDGE**

In

APPENDIX OF ITA NO.200/2019

## APPELLANT' S ANNEXURES:

- ANNEXURE A            THE TRUE COPY OF THE RETURN OF INCOME DATED 17/01/2008 FILED BY THE APPELLANT FOR THE A.Y.2007-08.
- ANNEXURE B            THE TRUE COPY OF THE ORDER DATED 31/3/2014 ISSUED UNDER SECTION 153A READ WITH SECTION 153C OF THE ACT, FOR THE A.Y 2007-08 BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2, KOZHIKODE.
- ANNEXURE C            THE TRUE COPY OF THE ORDER DATED 30/11/2015 ISSUED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-IV, KOCHI FOR THE AY 2007-08.
- ANNEXURE D            THE TRUE COPY OF THE APPEAL MEMORANDUM DATED 13/02/2016 FILED BEFORE THE APPELLATE TRIBUNAL FOR THE A.Y 2007-08.
- ANNEXURE E            THE TRUE COPY OF THE COMMON ORDER DATED 30/01/2018 ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN, RELATING TO THE A.Y. 2007-08.
- ANNEXURE F            THE TRUE COPY OF THE ARGUMENT NOTE DATED NIL SUBMITTED BEFORE THE APPELLATE TRIBUNAL.
- ANNEXURE G            THE TRUE COPY OF THE RELEVANT EXTRACT OF THE PROFIT AND LOSS ACCOUNT, BALANCE SHEET OF MOIDU'S MEDICARE (P) LTD., CALICUT, FOR THE YEAR ENDED 31/03/2007, RELATING TO THE A.Y.2007-08.

APPENDIX OF ITA NO.217/2019

## APPELLANT' S ANNEXURES:

- ANNEXURE A THE TRUE COPY OF THE RETURN OF INCOME DATED 06.12.2012 FILED BY THE APPELLANT FOR THE A.Y 2011-12.
- ANNEXURE B THE TRUE COPY OF THE ORDER DATED 31.03.2014 ISSUED UNDER SECTION 153A READ WITH SECTION 153C OF THE ACT, FOR THE A.Y 2011-12 BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2, KOZHIKODE.
- ANNEXURE C THE TRUE COPY OF THE ORDER DATED 30.11.2015 ISSUED BY THE COMMISSIONER OF INCOME-TAX(APPEALS)-IV, KOCHI FOR THE A.Y 2011-12.
- ANNEXURE D THE TRUE COPY OF THE APPEAL MEMORANDUM DATED 13.02.2016 FILED BEFORE THE APPELLATE TRIBUNAL FOR THE A.Y 2011-12.
- ANNEXURE E THE TRUE COPY OF THE COMMON ORDER DATED 30.01.2018 ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN, RELATING TO THE A.Y 2011-12.
- ANNEXURE F THE TRUE COPY OF THE ARGUMENT NOTE DATED NIL SUBMITTED BEFORE THE APPELLATE TRIBUNAL.
- ANNEXURE G THE TRUE COPY OF THE RELEVANT EXTRACT OF THE PROFIT AND LOSS ACCOUNT AND BALANCE SHEET OF MOIDU'S MEDICARE (P) LTD., THE YEAR ENDED 31.03.
- ANNEXURE G1 THE TRUE COPY OF THE RELEVANT EXTRACT OF THE PROFIT AND LOSS ACCOUNT AND BALANCE SHEET OF MOIDU'S MEDICARE (P) LTD., CALICUT, FOR THE YEAR ENDED 31.03.2011.
- ANNEXURE H THE TRUE COPY OF THE CIRCULAR NO.19/2017 DATED 12.06.2017 ISSUED BY THE CBDT.
- ANNEXURE I THE TRUE COPY OF THE COMMUNICATION LETTER DATED 15.11.2010 ISSUED BY KERALA FINANCIAL CORPORATION TO MOIDU'S MEDICARE (P) LTD., WHEREIN THE APPELLANT IS A PERSONAL GUARANTOR.

APPENDIX OF ITA NO.218/2019

## APPELLANT' S ANNEXURES:

- ANNEXURE A      THE TRUE COPY OF THE ORDER DATED 31.3.2014 ISSUED UNDER SECTION 143(3) READ WITH SECTION 153A OF THE ACT, FOR THE A.Y 2012-13 BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2, KOZHIKODE.
- ANNEXURE B      THE TRUE COPY OF THE ORDER DATED 30.11.2015 ISSUED BY THE COMMISSIONER OF INCOME-TAX (APPEALS) IV, KOCHI FOR THE A.Y.2012-13.
- ANNEXURE C      THE TRUE COPY OF THE APPEAL MEMORANDUM DATED 13.2.2016 FILED BEFORE THE APPELLATE TRIBUNAL FOR THE A.Y.2012-13.
- ANNEXURE D      THE TRUE COPY OF THE COMMON ORDER DATED 30.01.2018 ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN, RELATING TO THE A.Y. 2012-13.
- ANNEXURE E      THE TRUE COPY OF THE ARGUMENT NOTE DATED NIL SUBMITTED BEFORE THE APPELLATE TRIBUNAL.
- ANNEXURE F      THE RELEVANT EXTRACT OF THE PROFIT AND LOSS ACCOUNT, BALANCE SHEET OF MOIDU'S MEDICARE (P) LTD, CALICUT, FOR THE YEAR ENDED 31.03.2012.
- ANNEXURE G      THE TRUE COPY OF THE CIRCULAR NO.19/2017 DATED 12.06.2017 ISSUED BY THE CBDT.
- ANNEXURE H      THE TRUE COPY OF THE COMMUNICATION LETTER DATED 15.11.2010 ISSUED BY KERALA FINANCIAL CORPORATION TO MOIDUS MEDICARE (P) LTD, WHEREIN THE APPELLANT IS A PERSONAL GUARANTOR.