

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

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.468/Coch/2016 : Asst.Year 2011-2012

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| Sri.Bathisha Kalam Pasha<br>C/o.V.Suresh, Advocate<br>TC 82/4237, 1 <sup>st</sup> Floor<br>Crescent Tower, Vanchiyoor<br>Thiruvananthapuram-<br>Pin 695035<br><b>PAN : AEPPP4561G.</b> | Vs. | The Pr.Commissioner of<br>Income-tax<br>Thiruvananthapuram |
| (Appellant)  |     | (Respondent)   |

ITA No.469/Coch/2016 : Asst.Year 2011-2012

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|---|-----|--|
| Sri.S.V.Unnikrishnan Nair<br>C/o.V.Suresh, Advocate<br>TC 82/4237, 1 <sup>st</sup> Floor<br>Crescent Tower, Vanchiyoor<br>Thiruvananthapuram-<br>Pin 695035<br><b>PAN : ABQPN5965J.</b> | Vs. | The Pr.Commissioner of<br>Income-tax<br>Thiruvananthapuram |
| (Appellant)   |     | (Respondent)   |

Appellants by : Sri.P.G.Jayasankar, Advocate  
Respondent by : Sri.A.Santham Bose, CIT-DR

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| Date of Hearing : 19.03.2018 | Date of<br>Pronouncement : 22.03.2018 |
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**ORDER**

**Per Bench**

These appeals at the instance of two assesseees are directed against two orders of the Commissioner of Income-

tax, passed u/s 263 of the Income-tax Act, 1961, both dated 14.03.2016. The relevant assessment year is 2011-2012.

2. Common issue is raised in these appeals, hence they were heard together and are being disposed of by this consolidated order.

3. There is a delay of 128 days in filing both the appeals. The assesseees have filed petitions for condonation of delay along with Affidavits, stating therein the reasons for delay in filing these appeals. On perusal of the reasons stated in the Affidavits, we hold the delay of 128 days in filing these appeals cannot be attributed to any laches on the part of the assesseees, hence we proceeded to dispose of the case on merits.

4. The solitary issue raised in these appeals is whether the CIT is justified in setting aside the assessment orders passed u/s 143(3) of the I.T.Act and directing the Assessing Officer to deny the claim of exemption for medical allowances, conveyance allowances and sumptuary allowances etc.

5. The brief facts of the case are as follow:-

5.1 The assesseees are Officers in the State Judicial Services and are functioning as District Judges in the State of Kerala. For the assessment year 2011-2012, returns of income was filed by the two assesseees by claiming exemption for the

amount of sumptuary, conveyance and medical allowances. The assessments were completed u/s 143(3) of the I.T.Act, wherein exemption claimed under sumptuary, conveyance and medical allowances etc. were allowed by the Assessing Officer. Subsequently, the CIT had issued notice u/s 263 of the I.T. Act for revising the assessment completed u/s 143(3) of the I.T.Act. The CIT had held that the allowances claimed as exemption on the basis of the recommendation of Shetty Commission Report as approved by the Hon'ble Supreme Court were not exempted under the I.T.Act and hence the assessments are to be revised. The assessee had filed written objections against the notice issued proposing revision of the assessment orders. The assessee had brought to the notice of the CIT the nature and characteristics of the claim. The CIT, however, rejected the objections raised by the assessee and passed an order u/s 263 of the I.T.Act setting aside the assessment orders and directing the A.O. to deny exemption claimed for sumptuary, conveyance and medical allowances etc. The relevant finding of the Administrative CIT while passing the order u/s 263 of the I.T.Act in the case of ITA No.469/Coch/2016, reads as follow:-

*"4. I have considered the submission of the assessee's A.R. and also the observations made by the Hon'ble Supreme Court relied on this regard. The Hon'ble Supreme Court as quoted supra has ordered that –*

*'Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted.*

*WE are aware that it will become necessary for service and other rules to be amended so as to implement this judgment.'*

*The Hon'ble Supreme Court's decision in this regard is crystal clear. The Court has directed the State and Central Governments to implement the Shetty Commission's recommendations.*

*5. In order to give effect to the Shetty Commission recommendations, the Income tax Act and relevant rules ought to have been amended. In the absence of such an amendment, the direction by the Hon'ble Supreme Court to the Central Government would not directly render the sumptuary allowance, conveyance allowance, special allowance etc., tax free.*

*I find from the record that there are no notifications or amendment in this regard by the Central government. Therefore, till such time such amendments are made to implement the Shetty commission recommendations, the existing: rules will apply. If the assessee is aggrieved that the said recommendations have not been implemented by the appropriate authority then he ought to have sought judicial redress of the same rather than claiming these allowances as tax-free.*

*6. In the absence of any amendment to the Act or the Rules there to, the admission of the claims of exemption made by the assessee and allowed by the Assessing Officer are erroneous and prejudicial to revenue. It appears that the Assessing Officer mistook the direction of the Hon'ble Supreme Court to implement the Shetty Commission recommendation as implementation per se. Such an understanding is*

*not correct and it leads to an incorrect application of law.*

*In view of the facts discussed supra, I set aside the order of the Assessing Officer made u/s143(3) on 24.03.2014 with direction to verify the claims of exemption of medical allowance, conveyance allowance, sumptuary allowance etc. and allow as per provisions of the Income Tax Act. The A.O will give the assessee an opportunity for being heard before passing the order."*

6. Aggrieved by the orders passed u/s 263 of the I.T.Act, the assesseees have filed present appeals before the Tribunal. The learned Counsel for the assesseees submitted that the Shetty Commission Report which is the basis for payment of sumptuary, medical and conveyance allowances has been approved by the Hon'ble Apex Court in the case of *All India Judges' Association v. Union of India and Others Writ Petn. (Civil) 1022 of 1989, D/- 13.11.1991 [AIR 1992 Supreme Court 165]*. It was submitted that the sumptuary allowances had been specifically stated by the Hon'ble Supreme Court is a payment made in the course of performance of duty and cannot be considered as a perk for being included as an income in the hands of the recipient. It was stated by the learned Counsel that this is a declaration of law by the Hon'ble Apex Court and in view of the judgment of the Hon'ble Apex Court, sumptuary allowance received by the assesseees cannot be considered as income.

7. The learned Departmental Representative, on the other hand, strongly supported the revisionary orders passed u/s 263 of the I.T.Act.

8. We have heard the rival submissions and perused the material on record. The CIT while passing the order u/s 263 of the I.T.Act noted that the allowances claimed as exempt on the basis of recommendation of Shetty Commission Report, which is approved by the Hon'ble Apex Court, has not been exempt under the Income-tax Act. It was further noticed by the CIT that the Assessing Officer mistook the direction of the Hon'ble Apex Court to implement the Shetty Commission Report as implementation per se and such understanding of the A.O. is not correct and it leads to incorrect application of law.

8.1 The Oxford English Dictionary defines "sumptuary" means as a private expenditure in the interest of the State. The salient feature arising from it are (1) the expenditure is in the public interest and (2) it is spent by an individual, generally a public officer, with due regard and restriction keeping the State's interest in view. The sumptuary allowances paid to the District Judges was made part of the salary and the allowance following the Shetty Commission Recommendation on the pay and allowance which was approved by the Hon'ble Apex Court in the case of *All India Judges' Association v. Union of India and Others (supra)*.

8.3 The Division Bench of the Hon'ble High Court has confirmed a learned single Judge judgment wherein, the learned Judge had rejected the plea of Kerala Judicial Officers' Association that acceptance of recommendation of Shetty Commission Report by the Hon'ble Supreme Court should be considered as declaration of law. A copy of the judgment of Hon'ble Division Bench in W.A. No.2069/15 (judgment dated 03.03.2016) is placed on record. The relevant observation of the Hon'ble High Court reads as follow:-

*"4. Having bestowed our anxious consideration, we do not find our way to disagree with the finding rendered by the learned single Judge following the afore-noted precedents. The learned single Judge, therefore, rightly refused to accept the contention of the Association that the acceptance of the recommendations of the Shetty Commission Report has to be considered as declaration of law by the Hon'ble Supreme Court for the purpose of its enforcement. Those recommendations are matters which may generate room for relief in cases where no rules have been framed; in which event, the learned single Judge has rightly found that the remedy does not lie before this Court.*

*5. For the aforesaid reasons, we are of the view that this writ appeal has to fail.*

*6. Before parting, we may note that an attempt was made even by the Division Bench during the pendency of this appeal to find out whether there could be a re-look at the issue by the executive. The Assistant Solicitor General of India was required to bring the issue involved in the case to the notice of the authorities concerned in the Central Government.*

*7. We have seen the provisions of the Income Tax Act and the limited extent of power which is given through delegation. We think that this is not a matter which could succeed through judicial review at our hands."*

8.4 Since the Hon'ble High Court had held that acceptance of the Shetty Commission Report by the Hon'ble Apex Court is not a declaration of law and since there is no provision under the Income-tax Act or the Rules, whereby Medical, Conveyance and Sumptuary allowances are exempt from taxation, we hold that CIT is justified in invoking his revisionary jurisdiction u/s 263 of the I.T.Act. It is ordered accordingly.

9. In the result, the appeals filed by the assesseees are dismissed.

Order pronounced on this 22<sup>nd</sup> day of March, 2018.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 22<sup>nd</sup> March, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The Pr.CIT Thiruvananthapuram.
4. DR, ITAT, Cochin
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**