

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. Nos. 518 to 523/Coch/2018
Assessment Years:2009-10, 2010-11, 2011-12, 2012-13, 2014-15 & 2015-16

Al Zarafa Travels & Manpower Consultants (P) Ltd., 1 <sup>st</sup> Floor, Lake View Apartments, Church Landing Road, Ernakulam-682 016. [PAN:AAFCA 4935N]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Thomson Thomas, FCA
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	16/01/2019
<b>Date of pronouncement</b>	04/02/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against common order of the CIT(A)-III, Kochi dated 19/10/2018 and pertain to the above assessment years.

2. Since the issues involved in these appeals are common, they were heard together and are being disposed of by this common order.

3. The assessee has raised the following common grounds:

1. The Commissioner of Income Tax(Appeals) ought to have condoned the delay in filing the appeal.

2. The Commissioner of Income Tax (Appeals) ought to have considered the fact that the delay in filing the appeal is on account of reasons beyond the control of the appellant.

3. Since condonation of delay in filing the appeal is purely the discretion of the CIT (Appeals), the assessing officer has erred in objecting to the condonation of delay, that too, on his own initiative, without a remand report being called for. The very action of the assessing officer shows the hostility with which he has acted while completing the assessment.

4. Basic purpose of appeal is to provide justice to the appellant. By not condoning the delay on valid grounds, the CIT(A) has acted against the legislative intent behind the appellate proceedings, that too, in a case where a high pitched ex-parte assessment has been made on the appellant purely based on the statements of third persons, that too, without providing an opportunity to cross examine those persons.

5. Since the assessments were made ex parte and the huge additions were made solely based on the statements of third persons and since Commissioner of Income Tax (Appeals) has no power to set aside the assessment and remand the case back to the assessing officer, in order to avoid futile multiple proceedings, it is prayed to set aside the assessment and remand the case back to the assessing officer with a direction to provide an opportunity to the appellant to be heard and to cross examine the persons on whose statements are relied upon by the [Assessing Officer to make the addition](#). This ground is based on the decision of the ITAT, Ahmedabad 'C' Bench in Rajeshsingh Khadak Bahadur vs. Income Tax Officer ITA Nos.615& 616/Ahd/2014.

4. The facts of the case are that the appeals had been filed belatedly. The assessment orders were passed on 28/12/2016 and therefore, the appeals should have been filed on or before the end of January, 2017. However, the appeals had been filed on 22/06/2018. The assessee requested for condonation

of delay. On the issue of late filing of appeals, the Assessing Officer wrote a letter dated 11/07/2018 as follows:

*"Subsequent to the search action u/s 132 of the IT Act against Shri Varughese M. Uthup on 27.03.2015, notices u/s 153C was issued to the company M/s Al-Zarafa Travels and Manpower Consultants Private Limited in which the said assessee had played a vital role and also been the Director of the company. The proceedings resulted in a tax and penalty demand of Rs. 248 crores and Rs. 156 crores respectively in the hands of the said company.*

*Order u/s 179 was also passed on 14.08.2017 holding Shri. M. Uthup Varughese holding jointly and severally liable for the payment of tax and penalty demand of M/s Al-Zarafa Travels and Manpower Consultants Pvt. Ltd.*

*Due to complete non-cooperation by the assessee company, the assessment of the company had to be completed with the help of materials available on record.*

*Taking into account the contumacious conduct of the said Shri Varughese M. Uthup an order u/s 230 of the IT Act was passed on 05/03/2018 after approval from the DGIT, rendering it necessary for him to obtain a certificate from the Income Tax Authority that he has no liabilities under this act or the wealth tax act or that satisfactory arrangements have been made for the payment of all or any such taxes that has become payable before he leaves the territory of India.*

*Shri Varughese M. Uthup filed a writ petition against order u/s 230. The Honorable High Court Kerala upheld the order passed u/s 230. The matter was then taken to the Division Bench of the honorable High Court Kerala wherein also it was upheld. The order passed u/s 230 had an element of demand passed u/s 179 being the demand of M/s Al-Zarafa Travels and Manpower Consultants Pvt. Ltd. The Honorable High Court Kerala has also directed this office to redo the order u/s 179 and also have a relook at order u/s 230. During the course of hearing, it was submitted that M/s Al-Zarafa Travels and Manpower Consultants Pvt. Ltd has decided to file appeals against the assessment and penalty orders passed.*

*It is seen that the company has decided to file appeals after around 19 months of delay therefore, apparently bared by limitation. The assessee in the appeals has raised the following grounds:*

- i. After search, the company was abandoned by Shri. Renny Eapen and other director being his spouse Mrs. Susan Thomas was not in knowledge about the happenings in the company.*

*ii. Shri. Varughese M. Uthup came to know about the assessment orders passed only on 13.03.2018 and after that the employees of the company were contacted and the assessment was received.*

*iii. The subsequent delay is due again inaction by the other director and time was taken to get digital signature facility and PAN.*

*As one of the directors, it is the bounden duty of Smt. Susan Thomas to show due care and diligence in respect of the company. Her gross neglect and breach of duty of her part in relation to the affairs of the company and claiming lack of knowledge about the happenings cannot be a ground for condonation.*

*From the submission itself it is apparent that the company was in possession of the assessment orders passed as Shri. Varughese M. Uthup had stated that he had taken copies of the orders after contacting the employees and the erstwhile chartered accountant. Notwithstanding to his contention, the assessee has again not brought sufficient grounds to explain even the enormous delay they have taken after the so called receipt of assessment orders on 13.03.2018. It may thus appear that the company might have waited for a positive decision by the court in respect of order u/s 230A and having filed in this regard has taken recourse to file an appeal.*

*During the course of sworn statement on 04.07.2018, Shri. Varughese M. Uthup the spouse of Smt. Susan Thomas had stated that he had come to know about the search from T.V. Channels in U.A.E Further, he stated that he had called one of the staffs of the company and was apprised of the happenings. That being the case, the plea of Smt. Susan Thomas that she was unaware of the happenings in the company appears unfathomable.*

*Notwithstanding to any of the above, it is seen that the Director Mrs. Susan Thomas is a non-resident and whereas, the appeal has been uploaded in Kochi. It is not known as to how the appeal has been digitally signed in Kochi when the director is physically present in U.A.E*

*It is submitted that the reasons given by the company is unsustainable and it is apparent that the assessee could not bring on record any reasons which was beyond the control of him that caused delay in the filing of appeal. It is therefore pleaded that the appeal filed by the company may please be dismissed as barred by limitation."*

5. On appeal, the CIT(A) observed that the appeals were filed belatedly and such delay was more than 500 days. The CIT(A) summarized the main reasons given for the delay as follows:

- i. After the search, the Managing Director, Shri Renny Eapen abandoned the company and did not inform the other Director, Smt. Susan Thomas.
- ii. Smt. Susan Thomas is a non-resident she is employed in UAE for last two decades.
- iii. No one attended the assessment proceedings and the assessment had to be completed ex-parte.
- iv. The other Director, Smt. Susan Thomas was unaware of the happenings in the company.
- v. The assessment order was served on the erstwhile chartered accountant of the company and was received by Shri. Varughese M. Uthup on 13.03.2018.
- vi. Smt. Susan Thomas had to obtain digital signature, so that the appeal could be filed.

5.1 After considering the reasons given by the assessee, the CIT(A) found these reasons quite frivolous. According to the CIT(A), Shri Renny Eapen, the Managing Director abandoning the company, Smt. Susan Thomas, the other director, not being aware of the happenings, even though she is the wife of Shri Varughese M. Uthup, the main person controlling the affairs of the company was far from convincing. In fact, it was observed that all the happenings, post-search, was a story of non-cooperation on the part of the company and nothing

was beyond control of the assessee company. The CIT(A) was of the opinion that both Mr. Renny Eapen, Mrs. Susan Thomas and also Mr. Varughese M. Uthup were well aware of their responsibilities and consequences. The CIT(A) was of the opinion that the non-cooperation and delay was willful and therefore, the delay in filing the appeal cannot be condoned. Since delay in filing the appeal was not condoned, the grounds of appeal relating to the merits of the case were also not considered. In view of the above, all the appeals were treated as invalid and therefore, dismissed.

6. Against this, the assessee is in appeal before us. The Ld. AR submitted that the assessment order was passed on 28/12/2016. He drew our attention to a table showing relevant dates which reads as follows:

**TABLE SHOWING RELEVANT DATES & ADDITIONAL SUBMISSIONS**

Sl. No	Matter	Date
1.	Date of Assessment u/s. 153C r.w.s. 144	28.12.2016
2	Date of Receipt of the Assessment order by the ex-employee of the company	31.12.2016
3	Date of handing over the order by ex-employee Mr. Paul Varghese (Roy) to the erstwhile Chartered Accountant of the company Mr. James Thomas	15.02.2017
4	Date of Receipt of the Assessment Order by Director, Smt. Susan Thomas's husband Mr. Varughese M. Uthup	13.03.2018
5	Date of death of erstwhile Chartered Accountant Mr. James Thomas	15.06.2018

6	Date of filing Appeal	22.06.2018
7	Delay in filing appeal if the date of receipt of assessment order is taken as the date on which Smt. Susan Thomas's husband received the assessment order from the erstwhile Chartered Accountant of the appellant	71 days
8	Delay in filing appeal if the date of receipt of appeal by ex-employee is treated as date of receipt of Assessment Order	510 days

6.1 He also drew our attention to the affidavit dated 15/01/2019 filed by Shri Paul Varghese who was the ex-employee of the company and received the assessment order on behalf of the company which reads as follows:

"I, PAUL VARGHESE, alias Roy, aged 57, Son of P. P.Varghese, residing at Vadakenadayil Vadavathoor P. O., Kottayam District do hereby solemnly affirm and state as follows:-

I was an employee of the company, Al Zarafa Travels and Manpower Consultants (P) Ltd, Kochi till 31.03.2015, when the company was functioning at Door No. 39, 1<sup>st</sup> Floor, Lakeview Apartments, Church Landing Road, Kochi - 682 016. After the search initiated by the Income Tax Department at the premises of the company on 27.03.2015, I stopped attending the company and the business of the company was closed down.

On 31.12.2016, a staff of the Income Tax Department contacted me over telephone and requested me to collect some documents relating to the company Al Zarafa Travels and Manpower Consultants (P) Ltd. Since I was to leave to my home town at Kottayam by train, the staff member came to the Railway Station at Ernakulam Junction and handed over the assessment orders of the company to me.

Since the Managing Director of the Company. Sri. Renny Eapen could not be contacted, the assessment orders were retained by me. I was not aware of its relevance and importance. On 15.02.2017, I handed over the assessment orders to the erstwhile Chartered Accountant of the company Sri. James Thomas at his residence at Kottayam. The Chartered Accountant advised me to request the Managing Director Sri. Renny Eapen to contact him for taking

further steps. However, I could not contact the Managing Director Sri. Renny Eapen.

On 13.03.2018, Sri. Varughese M. Uthup contacted me and asked me whether I had received any communication from Income Tax Department. I appraised him about the fact that the assessment orders were handed over to Chartered Accountant, Sri. James Thomas."

6.2 He also drew our attention to the death certificate of assessee's ex-Chartered Accountant, Shri James Thomas dated 15/06/2018. He placed reliance on the condonation petition filed before the CIT(A) and explained the reason for delay in filing the appeal before the CIT(A) as follows:

*"After the search initiated on the company, a series of cases were initiated on the company by enforcement directorate and other agencies. Consequent to this, the managing director of the company, Sri. Renny Eapen, who was managing the full affairs of the company, abandoned the company without even informing the only other director, Smt. Susan Thomas. Smt. Susan Thomas is a non-resident for more than two decades and is employed in UAE and was not at all involved in the affairs of the company and was not in knowledge about the happenings in the company. When Susan Thomas's husband, Sri. Varughese M. Uthup had to appear in a court in Kochi on 14.03.2018, an order u/s 230 of the Income Tax Act was handed over to the court by the departmental lawyer. The order u/s 230 was issued pursuant to the demands raised on the appellant company. On knowing about the demands, appellant's husband contacted one of the employees of the appellant company who informed that the assessment orders were handed over to the erstwhile Chartered Accountant of the company. The appellant contacted the Chartered Accountant and the assessment orders were received from him only on 13.03.2018. On receipt of the order, the managing director was contacted and was requested to file appeal against the order. Though he agreed to file the appeal, no action was taken by him. In the above circumstances, Smt. Susan Thomas took the initiative to file the appeal. But, for filing the appeal, Digital Signature was mandatory. To get Digital Signature, PAN was also mandatory. Hence, she had to apply for PAN, get PAN and then apply for Digital Signature. All this resulted in delay of filing the appeal. The delay in filing the appeal was on account of reasons beyond the control of the appellant and was not intentional. In these circumstances, it is prayed to condone the delay in filing the appeal and accept the appeal as valid."*

6.3 Before us, the Ld. AR submitted that after the search initiated on the Company, its offices and business were closed down and it has never been re-opened. As a natural outcome, all the employees also had to discontinue from the services, although officially no termination notices were issued. The assessing officer, his staff, contacted one of such ex-employees Mr. Paul Varghese (Roy) whose telephone number was gathered by him. Since the Managing Director of the Company Sri. Renny Eapen abandoned the Company, the ex-employee, after waiting for one and a half months handed over the assessment orders to the erstwhile Chartered Accountant of the Company Sri. James Thomas on 15.02.2017. Sri. James Thomas was sick and was confined to his house and on 15.06.2018 he succumbed to his sickness and died. Smt. Susan Thomas's husband Mr. Varughese M. Uthup had collected the assessment orders from the Chartered Accountant on 13.03.2018. After that he contacted another Chartered Accountant to file the appeal, but only then it was known that Digital Signature is required for filing the appeal as the Department had changed the procedure of filing appeal from manual to online. When it was tried to get Digital Signature it was known that PAN was mandatory for obtaining Digital Signature. Smt. Susan Thomas being non - resident for more than 20 years had no PAN. She had to apply for PAN. The application forms were to be prepared and sent to UAE. After affixing the signature, the same had to be returned to India. The postal delay took considerable time. Moreover, allotment of PAN took nearly 2 weeks. After getting PAN, application for Digital Signature had to be

prepared and the same had also to be sent to UAE. After signing the same, it had to be returned to India and application for Digital Signature had to be submitted. After getting Digital Signature, appeals against 6 assessment orders and 6 penalty orders were to be prepared, vetted and filed. Considering this, the delay of 71 days from the date of receipt of assessment order by Smt. Susan Thomas's husband is reasonable. Even if the delay is taken as 510 days if the date of service of orders on ex-employee is treated as date of receipt of order, the delay is on account of genuine and meritorious reasons. It was submitted that the main objection raised by the Assessing Officer before the CIT (Appeals) against condonation of delay was that after the receipt of assessment order on 13.03.2018, the delay of 71 days in filing the appeal was not on account of reasons beyond the control of the assessee. It was submitted that from the reasons cited by the assessee before the CIT (Appeals) and before this Bench, it is evident that the delay was not intentional and was on account of reasons beyond the control of the assessee. Considering the above, it was prayed to condone the delay and set aside the orders of both the CIT (Appeals) and assessing officer and remit the case back to the files of the assessing officer to adjudicate the matter afresh after providing the assessee an opportunity of being heard.

6.4 It was further submitted that rejection of the appeal on account of delay would cause great hardship to the company and its directors. The director's

husband against whom travel ban u/s 230 of the Income Tax Act had been issued is a chronic patient having acute diabetes and hyper tension and is in treatment at Imperial College of Diabetes Centre at Abu Dhabi. He is also under treatment for renal related ailments at Sheikh Kaleefa Medical City at Abu Dhabi. Due to the pending tax dues on the company, he is not in a position to travel to Abu Dhabi where he has been undergoing treatment. His health is getting weakening. Considering the above, it was prayed to condone the delay and accept the appeal as valid.

6.5 The Ld. AR also placed reliance on the following judgments:-

- a) Collector, Land Acquisition Anantnag and Another vs. MST. Katiji and others (2002-TIOL-444-SC-LMT).
- b) Shri S. Muralikrishna vs. DCIT (ITAT, Bangalore Bench) (ITA Nos. 1649&1850/Bang/2016 dated 02/12/2016).
- c) Elnet Technologies Ltd. vs. DCIT (ITA No.997/2008 dated 08/10/2018)(Mad.).
- d) Rajeshsingh Khadak Bahadur vs. ITO (ITAT, Ahmedabad Bench)(ITA Nos. 615&616/Ahd/2014 dated 25/06/2015).

7. On the other hand, the Ld. DR relied on the order of the lower authorities and submitted that there is no reasonable cause for filing the appeals belatedly by 510 days and the condonation petition is to be dismissed.

8. We have heard the rival submissions and perused the record. There was a delay of 510 days from the date of receipt of the assessment order by the ex-employee of the assessee to the filing of the appeal by the assessee. On the other hand, it was submitted that the delay would be 71 days from the date of receipt of the assessment order taken as the date on which Smt. Susan Thomas's husband received the assessment order from the ex-chartered accountant of the assessee. In our opinion, at this stage, it is more appropriate to consider the date of receipt of the assessment order by the husband of Smt. Susan Thomas as the effective date of receipt of the assessment order so as to condone the delay in this case. We have gone through the condonation petition explaining the reasons for the delay in filing the appeal. There is no dispute in this case that the original assessment order was passed ex parte u/s. 144 of the I.T. Act and this was received by the assessee's ex-employee, namely Shri Paul Varghese on 31/12/2016 as per his sworn affidavit dated 15/01/2019. It was explained by the ex-employee of the Company, Shri Paul Varghese that after the search initiated by the Income Tax Department at the premises of the company on 27.03.2015, he stopped attending the company since the business of the company was closed down. On 31.12.2016, a staff of the Income Tax Department contacted him over telephone and requested him to collect some documents relating to the assessee-company which is said to be the assessment order. Thereafter, Mr. Paul Varghese went to the Railway station at Ernakulam Junction for collecting the assessment order from the staff of the Department.

To that extent, there is no dispute that the assessee's ex-employee had received the assessment order from the staff of the IT Department. The Department has not filed an counter affidavit in this regard. Shri Paul Varghese handed over the assessment order to the assessee's erstwhile Chartered Accountant, Shri James Thomas on 15/02/2017 who later expired on 15/06/2018. The assessee had also filed death certificate dated 15/01/2019, confirming the sad demise of Shri James Thomas, CA on 15/06/2018.

8.1 It was submitted before the CIT(A) that assessee's Managing Director, Shri Renny Eapen abandoned the company without informing the other Director, Smt. Susan Thomas. Smt. Susan Thomas is a non-resident who is employed in UAE for last two decades and was not conversant with the affairs of the company.

8.2 Subsequent to the search action u/s 132 of the IT Act against Shri Varughese M. Uthup on 27.03.2015, notices u/s 153C was issued to the company M/s Al-Zarafa Travels and Manpower Consultants Private Limited in which the said Shri Varughese M. Uthup had played a vital role and also been the Director of the company. The proceedings resulted in a tax and penalty demand of Rs. 248 crores and Rs. 156 crores in the hands of the said company and directed respectively which is evident from para 7 of the CIT(A)'s order. Order u/s 179 was also passed on 14.08.2017 holding Shri Varughese M. Uthup jointly and severally liable for the payment of tax and penalty demand of M/s Al-Zarafa

Travels and Manpower Consultants Pvt. Ltd. Due to complete non-cooperation by the assessing company, the assessment of the company had to be completed with the help of materials available on record. Taking into account the contumacious conduct of the said Shri Varughese M. Uthup an order u/s 230 of the IT Act was passed on 05/03/2018 after approval from the DGIT, rendering it necessary for him to obtain a certificate from the Income Tax Authority that he has no liabilities under this act or the wealth tax act or that satisfactory arrangements have been made for the payment of all or any such taxes that had become payable before he leaves the territory of India. Shri Varughese M. Uthup filed a writ petition against order u/s 230. The High Court Kerala upheld the order passed u/s 230. The matter was then taken to the Division Bench of the High Court Kerala wherein also it was upheld. The order passed u/s 230 had an element of demand passed u/s 179 being the demand of M/s Al-Zarafa Travels and Manpower Consultants Pvt. Ltd. The High Court Kerala had also directed this office to redo the order u/s 179 and also have a relook at order u/s 230. During the course of hearing, it was submitted that M/s Al-Zarafa Travels and Manpower Consultants Pvt. Ltd had decided to file appeals against the assessment and penalty orders passed. In the meantime, Smt. Susan Thomas's husband, Sri. Varughese M. Uthup had to appear in a court relating to his matter on 14.03.2018. On knowing about the demands, the assessee contacted one of the employees of the assessee-company who informed that the assessment orders were handed over to the erstwhile Chartered Accountant, Shri James

Thomas of the company. Smt. Susan Thomas's husband Shri Varughese M. Uthup received the assessment orders from him only on 13.03.2018. On receipt of the order, the managing director was contacted and was requested to file appeal against the order but no action was taken by him. In view of this, Smt. Susan Thomas took the initiative to file the appeal. But. for filing the appeal, Digital Signature was mandatory. To get Digital Signature, PAN was also mandatory. Hence, she had to apply for PAN, get PAN and then apply for Digital Signature. All this resulted in delay of filing the appeals before the CIT(A).

8.3 Therefore, we have to consider whether the assessee's failure is sufficient cause for condoning the delay. The Madras High Court considered an issue in the case of Sreenivas Charitable Trust v. Dy. CIT (280 ITR 357) and held that mixing up of papers with other papers are sufficient cause for not filing the appeal in time. The Madras High Court further observed that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.

8.4 There is a technical defect in the appeals since the appeals were not filed within the period of limitation. The assessee filed an affidavit stating that the appeals were not filed because of the improper service of notice by the Department. The Revenue has not filed any counter-affidavit to deny the allegation made by the assessee. While considering a delay in filing the appeal,

the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8.5 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. Moreover, no counter-affidavit was filed by the Revenue denying the reasons advanced by the assessee. It is not the case of the Revenue that the appeal was filed deliberately with delay. Therefore, we have to prefer

substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 71 days has to be condoned.

8.6 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not filing the appeal. We have to see the cause for the delay. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing

the appeal. When compared to 21 years, 71 days cannot be considered to be inordinate or excessive. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM ) condoned more than six hundred days delay. It is pertinent to mention herein that the view taken by the present author in that case was overruled by the Third Member.

8.7 We also place reliance on the decision of this Tribunal in the case of Midas Polymer Compounds (P.) Ltd vs. Asstt. CIT in ITA No. 288/Coch/2017 dated 25/06/2018 wherein this Tribunal condoned the delay of 2819 days. Insofar as the reliance on the decision of the Tribunal in the case of Midas Polymer Compounds (P) Ltd. cited supra is concerned, we are of the view that the Tribunal condoned the delay on the part of the assessee in filing the appeals by observing that the Chartered Accountant who was handling the matter failed to take proper steps to file the appeals and the Chartered Accountant filed affidavit stating that the appeals for AYs. 1999-2000 to 2004-05 in respect of the group concern and appeals for the AYs. 2005-06, 2007-08 and 2008-09 of the assessee were filed and represented by the Chartered Accountant at Cochin and he was under the impression that the appeal for the AY 2006-2007 was also filed by that Chartered Accountant in Cochin. It was also stated that the issue in all these appeals were covered in favour of the assessee by the order of the High Court of Kerala for the assessment years 2005-06 to 2008-09. The non-filing of the appeal was noted only when the Assessing Officer had enquired about the status

of the case and payment of tax in the last week of May, 2017. The assessee was under the impression that the Chartered Accountant had already made arrangements for filing the appeal and as so many appeals were pending before the ITAT, he was under the impression that the appeal for this year also was filed. It was submitted that the non-filing of the appeal was due to an inadvertent omission on his part in handing over the file to the AR at Cochin. Hence, it was prayed that the delay of 2819 days in filing the appeal may be condoned. As such, this Tribunal condoned the above delay of 2819 days.

8.8 The Madras High Court in the case of Sreenivas Charitable Trust (supra) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. In this case, the issue on merit regarding granting of deduction u/s. 80IB was covered in favour of the assessee by the Judgment of the Madras High Court. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In our opinion, this Judgment of the

Madras High Court is also squarely applicable to the facts of this case. A similar view was taken by the Madras High Court in the case of Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad).

8.9 The Mumbai Bench of this Tribunal in the case of Bajaj Hindusthan Ltd. v. Jt. CIT (AT) (277 ITR 1) has condoned the delay of 180 days when the appeal was filed after the pronouncement of the Judgment of the Apex Court. Furthermore, the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. The Apex Court in the case of Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi (AIR 1978 SC 537) held that non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by the Apex Court, there is sufficient cause for condonation of delay. The Supreme Court observed that when the delay was of short duration, a liberal view should be taken. "It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. The Apex Court did not say that longer period of delay should not be condoned. Condonation of delay is the discretion of the Court/Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay has to be condoned irrespective of the duration/period. In this case, the non-filing of an affidavit by the Revenue for opposing the condonation of

delay itself is sufficient for condoning the delay in filing the appeals before the CIT(A).

8.9.1 In case the delay was not condoned, it would amount to legalise an illegal and unconstitutional order. The power given to the Tribunal is not to legalise an injustice on technical ground but to do substantial justice by removing the injustice. The Parliament conferred power on this Tribunal with the intention that this Tribunal would deliver justice rather than legalise injustice on technicalities. Therefore, when this Tribunal was empowered and capable of removing injustice, in our opinion, the delay in filing the appeals before the CIT(A) has to be condoned and the appeals of the assessee have to be admitted and disposed of on merit.

8.9.2 In view of the above, we condone the delay in filing the appeals before the CIT(A) and remit the issue to the file of the CIT(A) to decide the issue on the merit of the additions made by the Assessing Officer. Since the assessment order was passed ex parte u/s. 144 of the Act, the CIT(A), if required, may call for the remand report from the Assessing Officer and confront the same to the assessee before deciding the appeals. We also make it clear that if the CIT(A) or the Assessing Officer relied on any statement of the third parties so as to frame the impugned assessments on an earlier occasion, the same is to be confronted to the assessee and if the assessee requires any cross examination of the parties concerned, the same is to be provided. With these observations, we remit the

issue to the file of the CIT(A) to decide the issue afresh regarding the merit of the additions.

9. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open Court on this 4<sup>th</sup> February, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 4<sup>th</sup> February, 2019

GJ

Copy to:

1. Al Zarafa Travels & Manpower Consultants (P) Ltd., 1<sup>st</sup> Floor, Lake View Apartments, Church Landing Road, Ernakulam-682 016.
2. The Assistant Commissioner of Income-tax, Central Circle-2, Kochi.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Commissioner of Income-tax, Central, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin

