

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

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

ITA No.501/Coch/2019 : Asst.Year 2005-2006

ITA No.502/Coch/2019 : Asst.Year 2006-2007

Sri. R.Vijayakumar 8/1766 Jawahar Road Parvana Junction Mattancherry Kochi. PAN : AESPK7782F.	Vs.	The Asst.Commissioner of Income-tax, Central Circle - 2 Ernakulam.
(Appellant)		(Respondent)

Appellant by : --- None ---

Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 22.10.2019	Date of Pronouncement : 22.10.2019
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against the consolidated order of the CIT(A) dated 12.04.2019. The relevant assessment years are 2005-2006 and 2006-2007. The order of the CIT(A) arises out of the assessing authority's order passed u/s 140A(3) r.w.s. 221(1) of the I.T.Act.

2. There is a delay of 40 days in filing these appeals. The assessee has filed a petition for condonation of delay. We have perused the reasons stated in the petition for condonation of delay. We find no latches on the part of the assessee for not filing these appeals on time. Hence, we condone the delay of

40 days in filing these appeals and dispose of the appeals on merits.

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

4. Briefly stated the facts of the case are as follows:

In response to notice u/s 153A of the I.T.Act, the assessee admitted a total income of Rs.96,96,580 and agricultural income of Rs.1,43,66,810 for assessment year 2005-2006. Similarly, for assessment year 2006-2007, in response to notice u/s 153A of the I.T.Act, the assessee had declared total income of Rs.74,02,750 and agricultural income of Rs.43,00,400. For assessment years 2005-2006 and 2007-2008, the assessee was liable for self-assessment tax amounting to Rs.21,20,580 and Rs.18,64,286 respectively. Since the assessee defaulted in making self-assessment tax, penalty notice u/s 140A(3) r.w.s. 221(1) of the I.T.Act was issued to the assessee for assessment years 2005-2006 and 2006-2007. The assessee appeared before the Assessing Authority and produced copy of the challan indicating the payment of self-assessment tax. However, the A.O. levied penalty of Rs.2 lakh for each of the assessment year on account of delayed payment of tax. The relevant finding of the Assessing Officer in this regard reads as follow:-

"As can be seen from the records of the assessee, he has not at all been taking his statutory obligations in payment of taxes seriously. The payment made on 17.2.09 under pressure from the Department, will not absolve him from the levy of penalty

in this case. It is also pertinent to note that the above tax liability has arisen on account of the declaration of undisclosed income consequent on search and seizure operations conducted in this case. Still, the assessee has not cared to pay the admitted tax before the due date."

5. Aggrieved by the imposition of penalty for assessment years 2005-2006 and 2006-2007, the assessee preferred appeals to the first appellate authority. The CIT(A) reduced the penalty imposed for each of the assessment year to Rs.75,000. The relevant finding of the CIT(A) in reducing the penalty imposed, is as follows:-

"5. The appellant had deposited the demand for AY 2005-06 even before the issues of the notice u/s 221(1) for AY 2005-06 dated 18.02.2009 and the tax due for AY 2006-07 on 31.03.2009 after duly informing the AO for the delay in making payment of taxes for AY 2006-07 on 26.02.2009. The conduct of the appellant, though somewhat errant, cannot be said to be conclusively non cooperative with the department. Though the payment of taxes was done late, for which interest has been paid as per law, the appellant seems to have been prevented by genuine difficulties in complying with the prescribed procedure of paying the taxes at the time of filing of return of income."

6. Aggrieved by the order of the CIT(A), in reducing the penalty amount to Rs.75,000 for each of the assessment year, the assessee has preferred these appeals before the Tribunal.

7. None appeared on behalf of the assessee, however, we proceed to dispose of the matter on merits after hearing the learned Departmental Representative. The learned DR strongly supported the order of the CIT(A).

8. We have heard the learned Departmental Representative and perused the material on record. The CIT(A) had noticed

that the assessee has deposited the admitted tax before he was in receipt of notice of penalty u/s 221(1) of the I.T.Act. Further, the CIT(A) had held that it cannot be concluded that the assessee has not cooperated with the Department. The CIT(A) found that non-payment of admitted tax within the time limit prescribed was on account of genuine difficulties faced by the assessee. For these reasons, for each of the assessment year, penalty imposed by the Assessing Officer amounting to Rs.2 lakh was reduced by the CIT(A) to Rs.75,000. When the assessee had paid self-assessment tax before he was in receipt of the penalty notice and when there is a categorical finding by the CIT(A) that the self-assessment tax could not be paid on account of genuine difficulties faced by the assessee, we are of the view that the retention of penalty amounting to Rs.75,000 for each of the assessment year is uncalled for and delete the same. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 22nd day of October, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 22nd October, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-III, Kochi.
4. The CIT (Central), Kochi.
5. The DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin