

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

**Before Shri George George K., Judicial Member
and
Ms. Padmavathy S., Accountant Member**

ITA Nos. 866 to 868/Coch/2022 & SA Nos. 59 to 61/Coch/2022 (Assessment Years: 2013-14, 2014-15 & 2016-17)		
District Legal Services Authority Thiruvananthapuram ADR Centre, District Court Complex, Vanchiyoor Thiruvananthapuram 695035 PAN – AAAGD2665M	vs	The Income Tax Officer (TDS) 3rd Floor, Aayakar Bhavan Kowdiar Thiruvananthapuram 695003
(Appellant)		(Respondent)

Assessee by:	Shri Anil D. Nair, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr.DR
Date of hearing:	27.02.2023
Date of pronouncement:	03.03.2023

ORDER

Per: Bench

These appeals at the instance of the assessee are directed against three orders of the CIT(A) (all dated 27.12.2021) passed under Section 250 of the Income Tax Act, 1961 (the Act). The orders of the CIT(A) arose out of the orders passed by the Assessing Officer (AO) levying late fees under Section 234E of the Act. The assessee has also filed stay petitions seeking stay of recovery of outstanding tax arrears. The relevant assessment years are 2013-14, 2014-15 & 2016-17.

2. There is a delay of 109 days in filing these appeals (though the Registry has noted 178 days). The assessee has filed condonation petitions and also

affidavits of the Chairman of the appellant (District Judge) stating therein the reasons for belated filing of these appeals. We have perused the affidavit of the District Judge stating therein the reasons for late filing of these appeals. We are convinced that there is sufficient cause for belated filing of these appeals and no laches can be attributed to the assessee. Hence, we condone the delay in filing these appeals and proceed to dispose off the same on merits. Common issues are raised in these appeals. Hence, they were heard together and disposed off by this consolidated order.

3. The brief facts of the case are as follows: -

The appellant, National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. Hon'ble The Chief Justice of India is the Patron-in-Chief. NALSA is housed at the premises of Supreme Court of India, Tilak Marg, New Delhi 110001. In every state, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the state. The State Legal Services Authority is headed by Hon'ble the Chief Justice of the respective High Court who is the Patron-in-chief of the State Legal Services Authority. In every district, District Legal Service Authority has been constituted to implement Legal Services Programs in the district. The District Legal Services Authority is situated in the District Courts Complex in every district and chaired by the District Judge of the respective district.

4. The appellant received orders under Section 200A of the Act, levying late fees under Section 234E of the Act for belated filing of quarterly return in Form No 26Q. The total demand raised under Section 234E of the Act for FY

2012-13 to 2015-16 was Rs.1,89,110/-. The details of the late fee, the financial year concerned and various quarters are detailed below: -

Financial Year	Quarter	Form No.	Amount (Rs.)
2012-13	Q4	26Q	1,18,710/-
2013-14	Q2	26Q	42,830/-
2013-14	Q4	26Q	22,550/-
2014-15	Q4	26Q	220/-
2015-16	Q1	24Q	4,800/-
Total			1,89,110/-

5. The assessee was served upon the recovery notice dated 10.09.2018. On receipt of the recovery notice the assessee filed appeals before the first appellate authority. Since the appeals were filed belatedly, applications for condonation of delay was also filed. The assessee had submitted written submission in support of its contentions both on condonation petitions as well as on merits. The CIT(A), however, dismissed the appeals in limine without condoning the delay in filing the appeal before him.

6. Aggrieved by the orders of the CIT(A) assessee has filed the present appeals before the tribunal. The grounds raised in all the appeals are identical which read as under: -

- A. The order of the appellate authority to the extent objected to hereunder is illegal, arbitrary and unauthorized.*
- B. The appellate authority failed to consider the application in the correct prospective and failed to appreciate the matter on merits.*
- C. The impugned order is in conflict with the ratio of the judgment of the Supreme Court in the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], where the Hon'ble Supreme court has suggested that liberal approach is to be taken while disposing of petitions for condonation of delay.*
- D. It is respectfully submitted that the application for condonation of delay was self explanatory and that the*

appellate authority while disposing of the same ought to have considered the matter on merits, which has been disposed of in favour of the assessee in several cases.

E. The appellate authority ought to have appreciated the fact that there is no enabling provision for recovery of fee under section 234E of the Act during the relevant period and the impugned proceedings were bad in law.”

7. The learned A.R. submitted that the Secretary (Sub Judge) of NALSA/ appellants had filed petition for condonation of delay before the CIT(A). The learned A.R. submitted that the proper authority to file the petition was the Chairman (District Judge) of the appellants. Therefore, it was submitted by the learned A.R. that in the interest of justice and equity the matter may be remanded to the CIT(A) for proper filing of condonation petition by the correct authority, namely the Chairman. On merits, the learned A.R. submitted that the issue is squarely covered in favour of the assessee by various judicial pronouncements.

8. The learned D.R., on the other hand, supported the order of the CIT(A).

9. We have heard the rival contentions and perused the material on record. Before the Tribunal the appeals have been filed at the instance of the Chairman (District Judge). The affidavits for condonation of delay in belated filing of the appeals before the Tribunal have also been filed by the Chairman. Before the CIT(A) the condonation petitions were filed by the Secretary of the appellants (Sub Judge). Moreover, in the condonation petition filed before the CIT(A), the delay has been calculated from the date of receipt of recovery notice. Therefore, the applications for condonation of delay submitted before the CIT(A) was not correct. In the interest of justice and equity we are of the view that opportunity should be provided to the assessee to furnish proper affidavits for condonation of delay, before the CIT(A). For this exercise the matter is restored to the files of the first appellate authority. The appellants are

directed to file proper condonation petitions by the correct authority, namely the District Judge. The CIT(A) is directed to consider the condonation petitions filed afresh and decide the matter in accordance with law. It is ordered accordingly.

10. Since we have disposed off the appeals, the stay petitions filed by the assessee are rendered infructuous and the same are dismissed.

11. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay petitions are dismissed.

Order pronounced in the open Court on 3rd March, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/
(George George K.)
Judicial Member

Cochin, Dated: 3rd March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.