

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

Before Shri Sanjay Arora, Accountant Member and  
Shri Manomohan Das, Judicial Member

**ITA Nos. 52-55/ Coch/2023**  
(Assessment Year: 2015-16)

New Higher Secondary School  
Kanjiramkulam S.O.  
Athiyannur (Part)  
Thiruvananthapuram 695524  
[PAN:TVDNO 0608G]

(Appellant)

The Deputy Commissioner  
of Income Tax  
vs. Thiruvananthapuram

(Respondent)

Appellant by: Shri Sreeram Sekar, CA  
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 13.07.2023  
Date of Pronouncement: 28.08.2023

**ORDER**

**Per Bench**

This is a set of four Appeals by the Assessee, an educational institution running a school, agitating the non-admission of it's appeals contesting the levy of fee under section 234E of the Income Tax Act, 1961 (the Act) on the processing of it's tax returns, one each for the four quarters of fy 2014-15, u/s.200A of the Act, by the National Faceless Appeal Centre, Delhi (NFAC), vide separate orders dated 21.9.2022. The appeals raising the same issue, were heard together, and are accordingly being disposed of per a common order for the sake of convenience.

2. The appeals are delayed by 59 days. The condonation petition/s, filed along with an affidavit/s by the Headmistress of the School, Sreekala N.S., the principal officer, who has also verified the appeal/s, reasonably explains the delay as on account of an uncertain state of affairs; her appointment having been disputed by a

senior officer of the School, and even as the appeal there-against is pending, the uncertainty persisted, the appeals, condoning the delay, were admitted.

3. Coming to the facts of the case, the non-admission of the appeals by the first appellate authority has been due to non-condonation of a 2296day delay attending the filing of the appeals with it. The tax statements filed in the prescribed form (Form 24Q) on 06.7.2015 (Qtr-1) and 15.7.2015 (Qtrs. 2 to 4), i.e., in the month of July, 2015, were processed u/s. 200A of the Act within a few days thereof, levying fee u/s.234E of the Act. The due date of filing the TDS statement being one month from the end of the relevant quarter, the same were thus filed with a delay ranging from 76 to 340 days. The said delay being subject to a late fee, reckoned on a per day basis, u/s.234E of the Act, and which delay the Assessing Officer (AO) has no power to condone, the said fee was levied vide the impugned processing, at sums ranging from Rs. 12,200 to Rs. 68,000. *Though appealable, no appeal was filed by the assessee.* Appeal in each case was, however, as against the due date, i.e., latest by 31.8.2015, filed on 29.11.2021, i.e., *at a delay of over six years.* The assessee's explanation for the said delay was the decision by the Tribunal in *Little Servant of Divine Providence Charitable Trust vs. ITO (TDS)* (in ITA No. 258/Coch/2016, dated 09.9.2016). The said view, it is stated, stands upheld by the Hon'ble jurisdictional High Court in, among others, *Olari Little Flower Kuries Pvt. Ld. vs. Union of India* [2022] 440 ITR 26 (Ker). The same, however, did not find favour with the Id. CIT(A). The appellant, in his view, had been clearly negligent in the matter, and it was a case of inaction. Citing decisions by the Hon'ble Apex Court on the law of limitation, reproducing there-from, the assessee's plea for condonation was found by him unacceptable and, resultantly, it's appeals dismissed as not maintainable. Aggrieved, the assessee is in second appeal.

4. We have heard the rival submissions, and perused the material on record.

4.1 Before us, the assessee's case continues to be one of substantial justice in view of the subsequent decision by the Hon'ble jurisdictional High Court in *Olari Little Flower Kuries Pvt. Ld.* (supra). In our view the assessee's case, as indeed it's plea, is wholly misplaced. None of the cited decisions by the Hon'ble Apex Court, clarifying the law on limitation, stands addressed by the assessee, much less met, even before us. In *Municipal Corporation of Delhi vs. International Security and Intelligence Agency Ltd.* [2004] 3 SCC 250, it is clarified that the law of limitation operates with all its rigour, and equitable considerations are out of place in applying the same. In *P.K. Ramachandran vs. State of Kerala*[1997] 7 SCC 556, the Apex Court again clarifies that the courts have no power to extend the period of limitation on equitable grounds, even as it may harshly affect a particular party. The Hon'ble Court in *CIT vs. Ram Mohan Kabra* [2002] 257 ITR 773 (P&H) holding, on a review of judicial precedents, including *Ramachandran* (supra), that delay could be condoned only on good & sufficient reasons, represents the clear law in the matter. In *G. Ramegowda, Major vs. Special Land Acquisition*, 1988 AIR (SC) 897, it was held that deliberate or gross inaction or lack of *bona fides* on the part of the party or it's counsel is no reason why the opposite side should be exposed to a time barred appeal. In *Surinder Kumar Boveja vs. CWT* [2006] 287 ITR 52 (Del) the appellant's plea for condonation of delay of about 5 years and 1½ years on account of ignorance of law was squarely rejected, stating that if delays were condoned on such grounds, there would be no end to litigation. This becomes particularly pertinent in view of the fact that the decision by a higher court cannot be said to be final; that by the Tribunal or the High Court, being liable to be, on challenge, reversed by the Hon'ble High Court or, as the case may be, the Apex Court. We may, to further embellish this order and fortify the law point being emphasized, cite some further decisions, viz. *CIT vs. Maharashtra State Government Employee Confederation* (Appeal No. CC3159-3160 of 2009, 23.3.2009 (SC)); *Ramlal, Madanlal & Chottelat v. Rewa Coalfields Ltd.* AIR 1962

SC 361; *H.H. Brij Inder Singh vs. Kanshi Ram*, AIR 1917-PC-156; *Baroda Rayon Copn. Ltd. v. CST*, 87 STC 266 (Guj); *M. Krishna Rao D. Phalke vs. Trimbak*, AIR 1938 Nag. 156; *Baldeo Lal Roy vs. State of Bihar*[1960] 11 STC 104 (Pat); *Mrs. Anita Chadha vs. CIT*[2010] 189 Taxman 300 (P&H), to cite some. In each case, it stands clarified that the matter of condonation of delay is essentially a matter of judicial discretion to be exercised on the anvil of due diligence and *bona fides* in prosecuting it's affairs being shown by the applicant.

4.2 In a spate of Miscellaneous Petitions by the Revenue consequent to the Full Bench decision by the Hon'ble jurisdictional High Court in *Pr. CIT vs. Poonjar SCB Ltd.*[2019] 414 ITR 67 (Ker), the Tribunal refused to condone the delay. The said decision, it was held, may be a reason for the filing the application, but the said statutory right, as the right to appeal in the instant case, could be invoked only where the same stands saved by its exercise within the time provided by law. As explained recently in *CIT v. Gracemac Corporation* [2023] 456 ITR 135 (SC), once a judgement is passed by a court following another judgement and, subsequently, the latter judgement is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgement passed following the overruled judgement, nor can be the same be reviewed.

The assessee in the instant case, as the Revenue in that case, had accepted the order by the lower (in hierarchy) court against it, being the levy of fee, applicable since 01/7/2012, the constitutionality of which stood upheld, for the delay in filing the TDS statements. It now, i.e., years later, seeks to take advantage of the decision by the Hon'ble Court in it's favour, which clearly cannot operate to defeat or violate the law on limitation. Why, even the decision by the Tribunal, on which it relies, stood rendered way back in September, 2016. The two ingredients necessary for condoning the delay, which could only be the result of a positive, affirmative action, i.e.,

- (a) proof of absence of negligence, and
- (b) proof of satisfactory level of diligence,

are found completely missing in the instant case. To us it is no more than an attempt to rake up a stale matter, strongly disapproved in *Parashuram Pottery Works Co. Ltd. vs. ITO* [1977] 106 ITR 1 (SC).

4.3 The assessee before us relies on the decision in *Collector, Land Acquisition v. Mst. Katiji & Ors.* [1987] 167 ITR 471 (SC), claiming it to be squarely applicable inasmuch as it stands clarified therein that where technical matters and that of substantial justice are pitted against each other, the case of the latter must be preferred. The said decision is clearly inapplicable in the facts of the case. The Hon'ble Apex Court thereby does not rewrite the law on limitation, overruling the settled law in the matter, case law on which is legion, some of which stand cited supra. It only emphasizes that a delay, as indeed the cause of delay, being essentially matters of fact, the same must be looked at pragmatically and not in a pedantic manner. *Why not, it questions, when it is settled that each day's delay is to be explained, should not that extend to explaining each hour's delay!* That is to say, some play at the joints is to be allowed where dealing with human situations. This, rather, again, represents the well-settled law in the matter, i.e., *qua* appreciation of facts, emphasized time over by the Hon'ble Court. One is here reminded of its observations in *Smt. Saroj Aggarwal v. CIT* [1985] 156 ITR 497 (SC), exhorting that facts must be viewed in their natural perspective, having regard to the compulsions of the circumstances of the case. This, it would be noted, is the stand of the Tribunal; we condoning the delay of 59 days in filing the instant appeals despite the application for condonation being not supported by any material; the deposition having a ring of truth to it. The argument is advanced *de hors* the facts of the case wherein the appellant, accepting the order against it, had chosen not to appeal there-against. And arises out of a misreading of the cited

decision, where the delay under reference was for 4 days; the instant appeals, on the contrary, being preferred, years later, to take advantage of a later decision.

4.4 No case, in our view, therefore, for condonation of delay stands made out. Even the plea of substantial justice is fraught, as the decision by the Hon'ble High Court in *Olari Little Flower Kuries Pvt. Ld.* (supra) has been on the ground that the AO had, prior to 01/6/2015, no power to levy the fee u/s. 234E on processing the TDS statement, admittedly granted w.e.f. and, thus, available since that date. *The processing of the tax statements in the instant case, and the exercise of the power to levy the fee thereat, is only thereafter; with, rather, the returns themselves being filed only after the said date.* It has not been shown that the Hon'ble jurisdictional High Court has in ratio held that the power cannot be exercised even after 31.5.2015 where and to the extent it relates to a period prior to 01.6.2015, which, where so, would be accompanied by reason/s. As explained in *CIT vs. Prakash Chand Lunia* [2023] 454 ITR 61 (SC), for a precedent to be binding there has to be a conscious consideration of an issue involved. The scope of processing, a procedural matter, is unrelated to the period to which the charge, on the statute since 01/7/2012, relates. The machinery provisions, it is trite law, are to be read in a manner so as to make the charge effective. We may though hasten to add that if the Hon'ble Court has indeed held so, i.e., in ratio, this Tribunal would certainly decide the matter in favour of the assessee, i.e., in adjudication of a competent appeal.

5. In view of the following, we find no reason to interfere with the impugned order(s) and, accordingly, decline to. We decide accordingly.

6. In the result, the appeals by the assessee are dismissed.

*Order pronounced on August 28, 2023 under Rule 34 of The Income Tax  
(Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: August 28, 2023

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin