

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

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

ITA No. 1005/Coch/2022
(Assessment Year : 2016-17)

Kolangath Muhammed Aslam Kolangath House Pariyapuram P.O. Tanur 676302 [PAN:CCYPK9063K] (Appellant)	vs.	The Income Tax Officer Ward - 1 & TPS, Tirur (Respondent)
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Appellant by:	Shri Hamid Hussain, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	13.09.2023
Date of Pronouncement:	11.12.2023

ORDER

Per: Sanjay Arora, AM

This is an Appeal by Assessee agitating the dismissal of his appeal contesting his assessment under section 143(3) of the Income Tax Act, 1961 ('the Act') dated 26.10.2018 for Assessment Year (AY) 2016-17 by the Commissioner of Income Tax (Appeals), NFAC (CIT(A), vide it order dated 06.04.2022.

2. At the outset, it was observed by the Bench that the appeal, filed on 23.12.2022, is delayed by 201 days; the impugned order being admittedly served on 06.04.2022. The codonation petition, which is in the form of a sworn affidavit dated 19.12.2022 by the assessee accompanies the same. The reason stated therein is the surgery of his mother for Internal Hemorrhoids in July, 2022, after which she was on bed rest for three months, with he being the only son attending her. On enquiry by the Bench that the limitation period, being up to 05.06.2022, had in fact expired much prior to her admission for surgery on 10.07.2022, it was explained by Shri

Hussain, the learned counsel for the assessee, that she had been under ailment since January.

3.1 The assessee was duly represented by his counsel before the first appellate authority, with submissions being filed regularly, the latest of which were on 30.03.2022, which finds reproduction in the impugned order, served on 06.4.2022. Even as one can understand a dislocation for a few weeks, or even a couple of months, due to illness of his mother, the nearly seven-month delay cannot be ascribed wholly to his mother's illness, even as we share full sympathy with the assessee in the matter. The assessee's mother, who would be both before and after the surgery on 11.07.2022, on bed rest, would be attended by family members, with the assessee, aged 48 years, with business responsibilities, attending to his business and other duties. All he was required to do was to assign the work of filing the appeal to his counsel, who is the same as before the Revenue authorities and, thus, conversant with the case. As we infer, the order by first appellate authority had been accepted by the assessee, and it was only later that he decided to file the appeal in consultation with his counsel. Under the circumstances, in our view, the 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 missing in the instant case.

3.2 Condonation is essentially a matter of judicial discretion, to be exercised on the anvil of due diligence and *bona fides* in prosecuting its affairs being shown by the applicant. Case law in the matter is legion. 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 its counsel is no reason why the opposite side should be exposed to a time barred appeal. 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.

3.3 The requirement of sufficient cause u/s. 5 of the Limitation Act, 1963, is, in our view, not satisfied in the facts and circumstances of the case, for us to grant condonation. The appeal is accordingly not admitted.

4. In the result, the assessee's appeal is dismissed as not maintainable.

*Order pronounced on December 11, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: December 11, 2023

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

n.p.