

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

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

**ITA Nos. 263 & 264/Coch/2020**  
(Assessment Years: 2011-12 & 2013-14)

Kollam District Cooperative Bank Ltd. Chinnakada Kollam 691001 [PAN: AAAAT4088L]	vs.	Asst. CIT, Circle - 1 Kollam
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	18 .01.2024
Date of Pronouncement:	29.02.2024

**ORDER**

**Per Bench:**

This is a set of two Appeals by the Assessee directed against separate Orders by the Commissioner of Income Tax (Appeals), Thiruvananthapuram [CIT(A)] dated 19.11.2019, dismissing the assessee's appeals contesting its assessments u/s. 143 of the Income Tax Act, 1961 (hereinafter "the Act") for Assessment Years (AYs.) 2011-12 and 2013-14, vide orders dated 28.10.2016 and 17/3/2016 respectively; the order for AY 2011-12 being under reassessment proceedings. The appeals raising common issue/s, were heard together, and are being disposed of per a common order.

2. The appeals filed on 19.06.2020, at a delay of 143 days, are also defective. Form 35, i.e., the memorandum of appeal before the first appellate authority, remains to be furnished despite the said defect being communicated vide defect notice dated 21.09.2020. No authorization is on record for AY 2013-14 (ITA No. 264/Coch/

2020). The delay is, again, not satisfactorily explained. The identically worded condonation petitions, which are per sworn affidavits dated 18.06.2020, state that the appeals were not filed in time as the assessee entertained a genuine belief that the Reserve Bank of India (RBI) had approved its merger with the Kerala State Cooperative Bank (KSCB). The said merger would only be per an order/notification and not otherwise. No details in this respect, viz., the date of application, the date of resolution or application for the same with the RBI, etc. or communication by the Government to the RBI in the matter, etc. have been specified; the appeal before the first appellate authority, has been by the assessee-bank, being in May, 2014 (AY 2011-12) and April, 2016 (AY 2013.14). And, further, what led the assessee to filing the appeals in June, 2020, which are verified by one Shri R. Ravi, the Chief Accountant of the erstwhile bank, who has also verified the depositions dated 18.06.2020, contradicting the assessee's stand. KSCB would, on succession, become the appellant and therefore nothing turns on the said plea. The lackadaisical attitude is apparent from the fact that the appeals against the assessee's orders, passed at a distance of over 7 months, stand filed before the first appellate authority with a time difference of about 2 years (being on 06.05.2014 and 27.04.2016 for AY 2011.12 and 2013-14, respectively). 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.

3.1 We may, nevertheless; our order being appealable, without prejudice to our finding the appeal as not maintainable, consider the appeal on merits as well. Condonation being one of the reasons therefor, the same, as afore-stated, is a result of a positive, conscious decision, and we may not be for that reason construed as having

condoned the delay. Reference in this context may be made to the decision in *Mela Ram & Sons v. CIT* [1956] 29 ITR 607 (SC). In the facts of the case, which stands also applied in *K.H. Traders v. CIT* [2013] 351 ITR 1 (Ker), the appeal was decided in the first instance by the first appellate authority on merits, oblivious of the delay attending its filing. The restoration thereto for considering the same, challenged on the ground of the appeal having been already decided, did not find acceptance by the Hon'ble Apex Court, explaining that an order dismissing an appeal as barred by time is also an order disposing the appeal, since admitted, passed in exercise of the appellate power. That is, there is no concept of deemed condonation under the Act.

3.2 The only issue raised in the appeals is the admissibility of the claim for deduction in respect of provision for standard assets, claimed in the sum of Rs.100.54 lakhs and Rs. 76.12 lakhs for the two successive years respectively. We are unable to fathom the provision of law under which the claim/s has been made; the assessee having been allowed deduction for provision for bad and doubtful debts u/s. 36(1)(viia) of the Act, which is the only provision allowing deduction in this respect to, *inter alia*, cooperative banks. Rather, the very fact that the assessee itself classifies the relevant assets as standard assets, i.e., not nonperforming assets (NPA) by definition, contradicts it's stand of the same being a provision in respect of bad and doubtful debts, allowance of which, as afore-stated is to be, as indeed has been, allowed in terms of s. 36(1)(viia), restricting it, of course, to the actual provision made in accounts. We, accordingly, find no merit in the assessee's case.

3.3 We decide accordingly.

4. The appeals, accordingly, fail both on grounds of maintainability (para 2) and, without prejudice, on merits (para 3).

5. In the result, the assessee's appeals are dismissed.

*Order pronounced on February 29, 2024 under Rule 34 of The Income Tax  
(Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: February 29, 2024  
n.p.

Copy to:

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

By Order

Assistant Registrar  
ITAT, Cochin