

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

Before Shri Sanjay Arora, Accountant Member and  
Ms. Kavitha Rajagopal, Judicial Member

**ITA No. 852/Coch/2023 &  
SA No. 192/Coch/2023**  
(Assessment Year: 2017-18)

Thurutiyath Suma Vinayaka Hospital Sulthan Bathery Wayanad 673592 [PAN: DYCPS6123K]	vs.	The Income Tax Officer Ward - 1, Kalpetta Sulthan Bathery Road Kainatty, Kalpetta Vyanad 673122
(Appellant)		(Respondent)

Appellant by:	Shri Aruj Raj S., Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	16.02.2024
Date of Pronouncement:	16.05.2024

**ORDER**

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order dated 23.11.2023 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting his assessment under section 147 read with section 144 & 144B of the Income Tax Act, 1961 (the Act) dated 20.03.2022 for Assessment Year (AY) 2017-18. The assessee's Stay Application (SA) *qua* the appeal was also posted for hearing along with.

2. The short point involved in the instant appeal is if the 144-day delay in filing the appeal before the Id. CIT(A), not condoned by him, dismissing the appeal *in limine*, ought to have been condoned by him, i.e., in law, and in the facts and circumstances of the case; there being accordingly no adjudication by him on merits.

3.1 The explanation for the nearly 5 month delay in filing the first appeal by the assessee, as advanced before the Id. CIT(A), was that she had omitted to check her email account (i.e. sumat\_madhu05@yahoo.co.in), being not an account which she normally visits or in regular use and, therefore, in ignorance of her assessment. On being enquired as to how, then, the assessee became aware of the impugned order so as to file the second appeal, and in time, Shri Raj, the learned counsel for the assessee, would submit that the knowledge of assessment was only on the receipt of the penalty notice u/s. 274 r/w s. 271A of the Act by post. The notice u/s. 148 dated 30.03.2021, he would add – timely response to which stands inferred by the Id. CIT(A) as again an attempt by the assessee to mis-state facts, to cover her negligence in not filing the appeal in time, was in fact also not received by email, as inferred by him, but by post. He was accordingly required by the Bench to prove the said contentions, being made for the first time before us. This, it was clarified, may though not be by itself conclusive of the matter, would yet prove the assessee's contentions and absence of any *mala fides*, as otherwise it would be a clear case of conscious disregard and gross negligence. On his stating of having made unsuccessful attempts in this regard, meeting no response by the Revenue, Smt. Devi, the Id. Sr. DR, was required by the Bench to submit the Revenue's response with regard to the assessee's assertions, i.e., after consulting the record. The Revenue has since placed on record the relevant evidences in the form of an eight-page paper-book which contains the postal receipts of notices u/ss. 148(1), dated 30.03.2021; 143(2), dated 28/6/2021; 274, dated 17.08.2022, the last being served on 24.08.2022. There is, therefore, truth in the assessee's claim of no adverse inference being liable to be drawn from the response to the notice u/s. 148 of the Act, also bearing out her credentials inasmuch as the first appeal was filed on 10.09.22, i.e., with dispatch, on becoming aware of the passing of the assessment order on the receipt of penalty notice on 24/8/2022.

3.2 It is also noteworthy that the assessee has since changed her email address as specified in Form 35, i.e., the memo of appeal before the first appellate authority and, further, furnished a postal address to the office of the first appellate authority for communication. The subsequent revert to the email id afore-mentioned in F/36, i.e., the appeal memo before the Tribunal, was, on query, explained by Sh. Raj as on account of difficulties being faced with the alternate one, so that the assessee has since deemed it proper to use the same as her regular email id, further confirming that notices at the said id would be duly responded to. We are in any case not inclined to draw any adverse inference from the said change.

3.3 Facts, as explained in *Saroj Aggarwal v. CIT* [1985] 156 ITR 497 (SC), must be viewed in their natural perspective, having regard to the compulsions of the circumstances of the case. And, in the absence of any dishonest or improper motive on the part of the assessee, by drawing from the among the two possible inferences, one that would lead to justice and equity. The provisions of law must be equitably interpreted and justly administered. The matter, thus, is to be looked at from a practical standpoint, i.e., the facts in the setting in which they obtain. The assessee is a doctor by profession, undergoing, after her post-graduation, residency at Calicut Medical College, during the relevant year. It is not uncommon for people, particularly engaged wholly in their professions, to not visit their email id, used generally for personal communication. Sure, she ought to have been circumspect in providing her email id and, further, one which is not in regular use, to the Revenue for communication purposes. The same, however, is generally by the Counsels, or at their behest. For the communication to be complete, in our view, the email ought to be followed by a text message informing the assessee of the transmission of the assessment order by mail, even as mandated by the standard operating procedure in this regard, if also not by post, as in fact the Revenue does *qua* notices u/ss.148, 143(2) and 274, as indeed the penalty order.

4. We, therefore, find existence of a reasonable cause for the delay, which is not for 105 days, as stated in the impugned order, but for 144 days, as Sh. Raj would clarify, meriting condonation in the facts and circumstances of the case. And, which, therefore ought to have been condoned by the Id. CIT(A), on the explanation as to non-receipt, and of acting with alacrity on knowledge of the relevant facts, which also transcends the extent of delay. We, accordingly, direct him to hear and decide the assessee's appeal on merits, in accordance with law, after affording a reasonable opportunity of hearing thereto. The assessee shall, on her part, furnish a disclaimer by way of a sworn affidavit, averring non-receipt of the assessment order, either by post or per email, which we find as missing before the Id. CIT(A), as well as in the Form 35, which bears verification, making her case with regard to the non-receipt of the assessment order complete. Needless to add, this is to be furnished only where it has not already been. Two, she shall also clarify as to which of the two email Ids, i.e., in F/35 or F/36, would be applicable. Also, where permitted by the Rules, she may opt for communication per post as well. The assessee's appeal having been heard and decided, her stay application is rendered infructuous. We decide accordingly.

5. In the result, the assessee's appeal is allowed, and her stay application, dismissed.

*Order pronounced on May 16, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: May 16, 2024

n.p., DDG

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 Bench

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**CORRIGENDUM**

Order under section 254(1) of the Income Tax Act, 1961 ('the Act') in the captioned appeal was passed on 16.05.2024. It is, however, found that there have occurred certain errors and omissions in the said order, which are, therefore, sought to be rectified through this corrigendum order. The same being only a correction of those apparent errors, do not therefore *per se* cause any prejudice to either party. The details are as under:

1. The words ' , either by post or per email, ' in the sentence beginning with the words: 'The assessee shall, on her part, ...' in para 4 (pg. 4) of the order, be read as 'by post,'.
2. The following words be read after the word 'allowed' in para 5: 'on the afore-said terms'.

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: May 17, 2024

DDG

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Assistant Registrar  
ITAT, Cochin Bench